

Amendments to the Drawings:

Figure 1 has been amended to add reference number 7 pointing to the pulmonary valve.

Figure 2 has been amended to add reference number 14 pointing to the aorta output.

Replacement sheets showing the amended Figs. 1 and 2 are included after the remarks section of this document.

REMARKS

This is in response to the Office Action mailed on January 11, 2008. Amendments are made to the drawings, the specification, and to claim 1. All amendments are fully supported by the original specification and drawings. No new matter is added. Claims 1-5 are pending in this application. In light of the foregoing amendments and following remarks, Applicant respectfully requests advancement of this application to allowance.

Interview Summary

A telephonic examiner interview was conducted on May 29, 2008. The participants included Applicant's Attorneys Brian Batzli (Reg. No. 32,960) and Benjamin Tramm (Reg. No. 62,303) and Examiners Brian Casler and Sanjay Cattungal. The Bolling patent (U.S. Patent No. 7,144,365), the Koestner patent (U.S. Patent No. 5,139,020), and pending claim 1 were discussed. Applicant's Attorneys noted that the specific Bolling patent cited by the Examiner may not be prior art to the pending application, and that issue was not being conceded.

With respect to claim 1, the Examiners preliminarily agreed that the prior art references do not disclose element (c), which recites "combining said two measurements to determine an overall native to prosthetic flow index." However, the Examiners requested a written Amendment outlining the argument to give them an opportunity to review the prior art references in more detail before making a final determination on this matter. As a result, no final agreement was reached.

Amendments to the Specification

The specification is amended to correct typographical errors in the specification. Specifically, the reference number 11 (page 4, line 8) is replaced with the reference number 21 to properly identify the first sensor transducer actuator in FIG. 4. In addition, the reference to "FIG. 2" (page 4, line 13) is amended to properly refer to FIG. 4. No new matter is added by these amendments.

Drawing Changes

Two drawing replacement sheets are submitted to replace FIGS. 1 and 2 (sheets 1/6 and 2/6). The replacement sheets are submitted to make three changes to the drawings as follows.

FIG. 1 is amended to add the reference number "7" pointing to the pulmonary valve. The pulmonary valve is described in the specification in the paragraph bridging pages 1 and 2. The specification states: "[a]t the exit of the right ventricle is the pulmonary valve 7." Page 2, line 1. The amendment to FIG. 1 provides a proper reference number 7 pointing to the exit of the right ventricle. No new matter is added by this amendment.

FIG. 2 is amended to add the reference number "14" pointing to the aorta output. The aorta output is described in the specification in the paragraph bridging pages 3 and 4. The specification states: "[in FIG. 2] there is illustrated a schematic of the human heart 10 which includes the aorta 11 and an additional mechanical assist device 12 which has a shunted ventricle input 13 and an aorta output 14." Page 3, lines 22-24. No new matter is added by this amendment.

Entry of the two drawing replacement sheets is respectfully requested.

Claim Amendments

With this Amendment, claim 1 has been amended to correct typographical errors. Specifically, the word "prothetic" has been correctly written as "prosthetic" at lines 1 and 5. The word was correctly written in line 6 of the claim and in the specification (e.g., the Title). Therefore, no new matter is added by this amendment. In addition, the word "and" is added to line 5 of claim 1. These amendments are not being made to overcome any art-based rejections.

Claim Rejections – 35 U.S.C. § 103

In the Office Action, claims 1-5 are rejected under 35 U.S.C. § 103(a) as being obvious over Bolling et al. (U.S. Patent No. 7,144,365) in view of Koestner et al. (U.S. Patent No. 5,139,020). Applicant respectfully traverses the rejection.

1. The Bolling Patent Has Not Been Established As Prior Art

The pending application was filed in the United States Patent and Trademark Office on January 3, 2005. In addition, the pending application claims priority to PCT/AU2003/000809 having an International Filing Date of June 26, 2003. The International Application further claims priority to Australian Patent Application PS 3352, filed on July 3, 2002.

The Bolling patent is a Continuation of an application filed November 6, 2002 (i.e., after Applicant's priority date).

It is noted, however, that the Bolling patent relies through a continuation-in-part to an earlier date(s). However, it has not been established that the subject matter of Bolling relied on by the Examiner was disclosed/presented in the earlier applications. Accordingly, Applicant reserves the right to present arguments at a later date as may be necessary.

2. Claim 1

As noted above, claim 1 was rejected under 35 U.S.C. § 103(a) as being obvious over Bolling et al. (U.S. Patent No. 7,144,365) in view of Koestner et al. (U.S. Patent No. 5,139,020). In addition to the reasons noted above, the rejection is also traversed because Bolling and Koestner both fail to disclose or suggest each element of claim 1.

Claim 1 recites a method of monitoring the operation of a prosthetic assist device. The method includes a step of (c) combining said two measurements to determine an overall native to prosthetic flow index.

The Office Action asserts that Bolling discloses "combining said two measurements to determine an overall native prosthetic flow index." The Office Action cites to the Abstract and claim 1 of Bolling.

Bolling does not disclose an overall native prosthetic flow index, nor a step of combining said two measurements to determine such an index, as recited in claim 1. The Abstract and claim 1 refer to a system including a pump and a catheter, but do not disclose "combining said two measurements to determine an overall native to prosthetic flow index." This element is also not disclosed by the Koestner patent. Furthermore, it would not have been obvious to modify Bolling or Koestner to achieve this element.

During the Telephonic Interview of May 29, 2008 (see Interview Summary above), the Examiners preliminarily agreed that neither the Bolling patent nor the Koestner patent disclose “combining said two measurements to determine an overall native to prosthetic flow index.”

Therefore, reconsideration and allowance of claim 1 are respectfully requested.

Applicant does not otherwise concede the correctness of the rejection and reserves the right to make additional arguments as may be necessary.

3. Dependent Claims

Claims 2-5 depend from claim 1, discussed above. Reconsideration and allowance of claims 2-5 are respectfully requested.

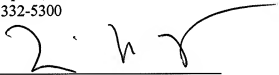
CONCLUSION

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. There may be additional reasons that the pending subject matter is patentably distinct from the cited references in addition to those discussed herein. Applicant reserves the right to raise any such arguments in the future. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Dated: June 11, 2008

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